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March 15, 1983

EXPORT ADMINISTRATION ACT

OPTIONS PAPER

Issue 1: Should the Administration bill include a "contract sanctity" provision that excludes pre-existing contracts from foreign policy export controls? (This prohibition would apply for 270 days, except where the President determines that the absence of foreign policy controls on these exports would prove detrimental to the overriding national interests of the United States).

Analysis:

Currently, the President may invoke export controls that affect pre-existing contracts at any time on all but agricultural commodities. Under a recently enacted law, pre-existing contracts for agricultural commodities are excluded from export controls for a period of 270 days except in the case of a declared national emergency or state of war.

Senator Heinz and Congressman Bonker have both introduced bills containing contract sanctity provisions. These proposals are strongly supported by the business community.

Pro: The imposition of export controls on pre-existing contracts makes U.S. exporters unreliable suppliers, and forces them to incur unexpected economic losses. Equity would require that non-agricultural commodities receive the same protection as agricultural commodities.

Con: The President needs maximum flexibility to conduct U.S. foreign policy short of military actions. In addition, by proposing this limitation, the President might be seen as acknowledging error with regard to the Soviet pipeline sanctions.

Agencies supporting: Agriculture, Commerce, OPD-WH, Treasury (for national security controls only), USTR, CIA

Agencies opposed: Defense, Justice, State, OMB

Decision:

Approve _____

Disapprove _____

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Issue 2: Should the Administration bill give the President new discretionary authority to impose import controls on a country whenever foreign policy export controls are imposed on that country?

Analysis:

Currently there are no provisions authorizing the President to impose import controls whenever export controls are imposed.

Senator Heinz has introduced a bill containing an import control provision. This proposal is supported by some members of the business community, although there is not a business consensus.

Pro: If U.S. exporters are required to incur economic loss, the businesses in the affected countries should also share the economic burden of U.S. foreign policy controls. The proposal gives the President an additional tool for implementing U.S. foreign policy.

Con: Political pressure may be brought to bear upon the President to impose import controls or take stronger measures than would otherwise be the case. Retaliation and other foreign relations problems would likely ensue from adoption of this proposal. Import restrictions imposed against GATT members solely for foreign policy reasons would be in violation of GATT obligations.

Agencies supporting: Commerce, Defense

Agencies opposed: Agriculture, CEA, State, Treasury, USTR

Decision:

Approve _____

Disapprove _____

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Issue 3: Should the Administration bill give the President new discretionary authority to impose import controls as a penalty against companies that violate COCOM or U.S. export controls? If so, should this authority extend to:

- A. Only national security controls?
- B. National security, foreign policy and short supply controls?

Analysis:

Currently the President does not have this authority. Moreover, COCOM is a purely voluntary organization. None of its members has authority to penalize violations of COCOM provisions by companies of another COCOM member.

Senator Heinz has introduced a bill containing a similar provision. This proposal is strongly supported by the business community.

Pro: Current enforcement provisions are not working well. The authority to impose such sanctions would make multilateral controls through COCOM and enforcement of our export control laws more effective. This proposal would provide a powerful incentive for companies to abide by COCOM provisions and U.S. export laws.

Con: This proposal would jeopardize continued participation in COCOM by certain member states. Any provision for sanctions should result from agreement among the COCOM members rather than by unilateral U.S. statutory mandate, the extraterritorial reach of which will be challenged. As in Issue 2, retaliation and foreign relations problems would likely ensue. Restrictions against GATT members solely imposed for foreign policy reasons would be in violation of the GATT obligations of the United States.

Agencies supporting: A. National security only: CEA, Treasury, USTR
B. All controls: Commerce, Defense

Agencies opposed: Agriculture, OMB, State

Decision:

Approve _____

- A. For national security controls only _____
- B. For all controls _____

Disapprove _____

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THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D.C. 20505

NIC #2199-83
21 March 1983

National Intelligence Council

MEMORANDUM FOR: Director of Central Intelligence
Deputy Director of Central Intelligence

THROUGH: Acting Chairman, National Intelligence Council

FROM: Maurice C. Ernst, NIO/Economics

SUBJECT: NSC Meeting on Renewal of the Export Administration Act

1. The purpose of the 22 March NSC meeting is to decide on three main issues concerning revision of the Export Administration Act before the Administration's draft of the Act is presented to Congress. These issues are: sanctity of contracts; new authority for imposing US import controls on foreign nations which do not abide by US foreign security export controls; and new authority for import controls on companies which are in violation of either national security controls alone or national security, foreign policy, and short supply controls. These issues are the only ones on which an interagency consensus could not be achieved from a much larger number which were identified when the policy review process was initiated. The three issues are summarized in Attachment A. An earlier options paper which covered all the initial issues is Attachment B.

2. The process of developing the Administration's position on renewal of the Export Administration Act has involved the balancing of the following considerations:

- o A desire to minimize the damage export controls do to the competitive position of US business.
- o A desire to minimize damage to our relations with our Allies.
- o A concern for protection of Presidential and Executive Branch powers.

3. There have been strong pressures on the Administration from business groups and demarches from foreign governments and the European Community to ease export controls, although in different ways. Several bills to revise the Act, mostly reflecting US business interests, are pending in Congress. Although there has been at least a near consensus within the Administration that it is possible to live with the present Act,

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some have suggested that attempts to strengthen Executive authority might be tactically useful in order to counteract the predominant pressures to weaken it.

Issue One

4. The "contract sanctity" issue has been hotly debated in the SIG-IEP and other groups. US business feels strongly that the power to override existing contracts is a serious problem and that there is no reason to treat industrial goods differently from agricultural products. The contrary view, which is held by both State and Defense, holds that excluding existing contracts from export controls would excessively limit Presidential authority and flexibility. Secretary Shultz, although favoring retention of existing Presidential authority, believes that the Administration should make clear that it will use its powers only for very serious reasons.

Issue Two

5. Commerce and Defense, as well as substantial business groups, favor new authority to impose import controls on foreign countries which were violating foreign policy export controls because it would strengthen the President's hand and result in more equitable burden sharing among the members of the Alliance. State and most other agencies are against it because of the potential damage to our relations with our Allies and the likely inconsistency with agreements under GATT.

Issue Three

6. Authority to impose import controls as a penalty against countries that violate COCOM or US export controls--with options to apply this provision only to national security controls, or also to foreign policy and short supply controls.

The arguments are similar to those under Issue Two.

7. Comment: There is little doubt that the addition of import control authority on either national security or foreign policy grounds would be very badly received by our Allies and would give public prominence to contentious issues, such as extraterritoriality, at a time when we are trying to build an Alliance consensus on East-West economic relations, INF, and other key Alliance questions. Indeed, there is a possibility that raising such issues would result in less cooperation from the Alliance, for example on COCOM, than would otherwise be the case.

8. What would create the problem is probably not so much the added authority the President would gain as the implication that the US is insisting on the principle of extraterritoriality in the face of the strong European reaction during the pipeline sanctions. The Allies almost

certainly would consider such an initiative to cast serious doubt as to the willingness of the US to approach East-West economic relations on a cooperative basis.



Maurice C. Ernst/

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Attachments:
As stated

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